



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

#8
2/11/03
PC

In re application of Van Dyk et al.

Serial No.: 09/831,489

Filed: August 10, 2001

) METHOD OF PACKAGING SOLVENT OR
) WATER BASED FORMULATIONS TO
) REDUCE SKINNING

) Attorney Docket: TJK/174

) Group Art Unit: 1772

) Examiner: Nordmeyer, P.

CERTIFICATE OF EXPRESS MAILING

I hereby certify that this correspondence is being deposited with the U.S. Postal Service by Express Mail No. EL366425281US in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231, on 2/6, 2003.



Timothy J. Keefer

Attorney for Applicants

Reg. No. 35567

Date of Signature: 2/6, 2003

Assistant Commissioner for Patents
Washington, D.C. 20231

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RESPONSE TO RESTRICTION REQUIREMENT

Dear Sir:

This paper is filed in response to the Restriction Requirement mailed January 6, 2003 in connection with the above-designated application. A response to the Restriction Requirement is due on or before February 6, 2003.

Remarks

In the Official Action the examiner restricts the present application to either Group 1, consisting of claims 52-87, drawn to a container having internal and external surfaces, or Group

2, consisting of claims 88-105, drawn to a method for preventing skin formation on a water-based formulation.

Applicants respectfully request reconsideration of the Restriction Requirement. In the Restriction Requirement, the Examiner states that the special technical feature linking the two groups of claims is “a water based formulation surface”. However, Applicants submit that the special technical feature linking the two groups of claims is an anti-skinning layer located on at least a portion of the internal surface and capable of retaining a layer of the formulation without excluding the formulation vapor in the container from contacting the formulation. This feature is recited in both independent claim 52 and independent claim 88.

In addition, 37 CFR §1.475(b) of the U.S. Patent Rules states:

“(b) An international or a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories:

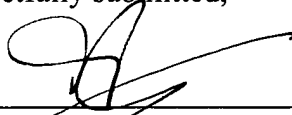
- (1) A product and a process specially adapted for the manufacture of said product;
or
- (2) A product and process of use of said product; or
- (3) A product, a process specially adapted for the manufacture of the said product,
and a use of the said product; or
- (4) A process and an apparatus or means specifically designed for carrying out the
said process; or
- (5) A product, a process specially adapted for the manufacture of the said product,
and an apparatus or means specifically designed for carrying out the said
process.”

Applicants respectfully submit that independent claims 52 and 88 have unity of invention under 37 CFR §1.475(b)(2) because claim 52 is drawn to a product and claim 88 is drawn to a method for using the product described in claim 52.

In view of the above remarks, Applicants respectfully submit that the Restriction Requirement is traversed and should be withdrawn.

If the Restriction Requirement is maintained, the Applicants provisionally elect Group 1 consisting of claims 52-87.

Respectfully submitted,



Timothy J. Keefer

Attorney for Applicants

Reg. No. 35567

Dated: 2/6/03, 2003

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AMENDMENT TRANSMITTAL LETTER

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

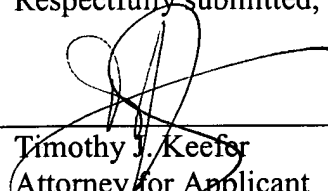
Please find enclosed the following documents pertaining to the above-referenced application:

1. Response to Final Office Action (3 pages)
2. Express Mail No. EL366425281US
3. Return postcard.

The Assistant Commissioner is hereby authorized to charge any necessary fees to Deposit Account 232126. In the event of non-payment of improper payment of a required fee, the Assistant Commissioner is hereby authorized to charge or credit Deposit Account No. 232126 as required to correct the error. A duplicate copy of this letter is enclosed for fee purposes.

Respectfully submitted,

Date: 2/6/03

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